

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL HARKEY,

Plaintiff,

v.

U.S. BANK, N.A., *et al.*,

Defendants.

Case No. 2:14-cv-00177-RFB-GWF

ORDER

Verified Petitions to Practice *Pro Hac Vice*
(ECF Nos. 64, 65, 127, 128, 129, 130, 137,
138)

Motion for Leave to File Surreply (ECF No.
83)

Motions to Strike (ECF Nos. 117, 123)

I. INTRODUCTION

This matter is before the Court on a series of motions that appear to relate to a dispute over a stipulation for extension of time that was filed and withdrawn in this case in July 2014. See ECF Nos. 56, 60. On August 1, 2014, counsel for Defendants Black Knight Financial Services, LLC (“BKFS”) and Fidelity National Financial Inc. (“FNF”) (collectively, “Petitioners”) filed Verified Petitions for Permission to Practice *Pro Hac Vice* in this case. See Verified Petitions, ECF Nos. 64, 65. Plaintiff filed a response to both petitions, asking this Court to inquire as to whether Petitioners “are prepared to comply with the Rules of this Court and the Nevada Rules of Professional Conduct in these proceedings.” Resp. Verified Petitions at 5, ECF No. 70. Plaintiff alleges that Petitioners filed a stipulation for extension of time and affixed Plaintiff’s counsel’s electronic signature to it without Plaintiff’s counsel’s consent. Petitioners dispute this claim and argue that Plaintiff’s counsel gave his express consent and only attempted to claim that no such consent was given after the stipulation was filed.

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1 This dispute has led to a cascade of filings as to whether Petitioners should be permitted
 2 to appear in this case and whether their filings should be stricken. In addition to opposing the
 3 eight *pro hac vice* petitions filed by Petitioners, Plaintiff has also filed a Motion to File Surreply
 4 (ECF No. 83) and a Motion to Strike (ECF No. 117, as amended by ECF No. 123) which seeks
 5 to strike all filings made by Defendants BKFS and FNF and requests an order to show cause why
 6 Petitioners should not be held in contempt, sanctioned and disciplined for violations of the Local
 7 Rules of this Court and of the Nevada Rules of Professional Conduct.

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9 II. DISCUSSION

10 The Court has reviewed the parties' submissions relating to the incident which Plaintiff
 11 claims raises concerns as to Petitioners' ability to comply with the rules of this Court and with
 12 the rules of professional conduct. The Court finds that it need not make a factual determination
 13 as to whether Plaintiff's counsel consented to the stipulation because Petitioners quickly rectified
 14 the situation. The Court is satisfied that Petitioners are willing and able to uphold their obligation
 15 to comply with Court rules and standards of professional conduct. These conclusions inform the
 16 Court's rulings on the motions as set forth below.

17 A. Plaintiff's Motion for Leave to File Surreply

18 The Court denies Plaintiff's motion to file a surreply. Nothing in the Local Rules
 19 authorizes surreplies. See LR 7-2(a)–(c). Surreplies are highly disfavored and courts in this
 20 district routinely interpret Local Rule 7-2 to allow filing of surreplies only by leave of court and
 21 only to address new matters raised in a reply to which a party would otherwise be unable to
 22 respond. See, e.g., FNBN-RESCON I LLC v. Ritter, 2014 WL 979930 at *6 (D. Nev. Mar. 12,
 23 2014); Lasko v. Am. Bd. of Surgery, 2014 WL 300930 at *1 (D. Nev. Jan. 27, 2014).

24 Here, Plaintiff seeks to file a surreply to respond to material contained within Petitioner's
 25 reply brief that is directed at past ethical violations and sanctions incurred by counsel for
 26 Plaintiff and his colleague. Petitioners' filings related to these violations and sanctions are
 27 irrelevant to the issue of whether Petitioners should be permitted to practice *pro hac vice* in this

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1 case. Thus, the Court declines to consider any materials pertaining to the past conduct of counsel
2 for Plaintiff submitted by either party and will not permit a surreply directed at that past conduct.

3 Plaintiff's motion also requests an evidentiary hearing to prove that Petitioners
4 misrepresented that Wendy Alison Nora, whom counsel for plaintiff states is working as a
5 "research assistant, investigator and paralegal in the instant case," was "vitriolic" during
6 discussions with Petitioners and that she is acting as lead counsel in this case. Mot. Surreply at 4-
7 5, ECF No. 83. District courts have discretion over whether to hold an evidentiary hearing, but
8 they "should not do so if the certification, the pleadings, the affidavits, and any supporting
9 documentary evidence do not reveal an issue of material fact." Kashin v. Kent, 457 F.3d 1033,
10 1043 (9th Cir. 2006) (citation omitted) (internal quotation marks omitted).

11 Plaintiff's request for an evidentiary hearing is denied. The Court does not deem the
12 issues of whether Ms. Nora was in fact acting "vitriolic" or whether she is in fact acting as lead
13 counsel to be material. These facts have no bearing on whether Petitioners should be admitted to
14 practice in this case. As stated above, the Court has found that Petitioners have acted
15 satisfactorily by quickly remedying any defects that may have existed in the stipulation for
16 extension of time that they filed. An evidentiary hearing on issues tangential to this case would
17 be unnecessary.

18 **B. Plaintiff's Motion to Strike**

19 Plaintiff's motion to strike, which was amended to correct typographical errors, asks that
20 filings made by BKFS and FNF be stricken. Plaintiff states that Petitioners have been practicing
21 law in this case by soliciting clients for representation and drafting documents that are filed by
22 BKFS and FNF's local counsel, and that these "violations" justify striking filings made by these
23 defendants. Plaintiff also asks for an order to show cause why Petitioners should not be
24 sanctioned and held in contempt.

25 "The court may strike from a pleading an insufficient defense or any redundant,
26 immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Further, district courts have
27 inherent power to control their own dockets, including the power "to determine what appears in
28 the court's records" and to strike items from the docket to address conduct that is improper but

1 does not warrant dismissal. Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404-05 (9th
2 Cir. 2010).

3 Plaintiff's motion to strike is granted only with respect to BKFS and FNF's reply brief
4 and the supporting declaration of James E. Heffner. ECF Nos. 76, 78. Significant portions of
5 these filings seek to undermine Plaintiff's counsel's credibility by introducing evidence of their
6 past ethical violations and misconduct. See Reply at 1:25-28, 2:1-15, ECF No. 76; Decl. of
7 James E. Heffner Ex. C, D, E, F, G, H, I, J, K, L, ECF No. 78. These portions of BKFS and
8 FNF's filings have no bearing on whether Petitioners are qualified to practice *pro hac vice* or on
9 the validity of Plaintiff's legal claims, and their only purpose in this action is to cast Plaintiff's
10 counsel in a negative light. Accordingly, the Court exercises its inherent power to strike these
11 items from the docket, but orders that they be refiled without the portions directed toward
12 Plaintiff's counsel's past conduct. Petitioners are admonished not to present such evidence in any
13 future filing in this case.

14 The remainder of Plaintiff's motion to strike is denied. Nothing in the Local Rules
15 precludes attorneys whose *pro hac vice* petitions are pending from representing clients and
16 participating in the drafting of pleadings, and Plaintiff has provided no legal authority supporting
17 such a claim. The Court also denies Plaintiff's request for an order to show cause. Plaintiff has
18 not demonstrated that Petitioners have violated any order of this Court.

19 **C. Verified Petitions for Permission to Practice *Pro Hac Vice***

20 The Court has reviewed the eight *pro hac vice* petitions submitted by Petitioners Michael
21 J. Gleason and James E. Heffner (ECF Nos. 64, 65, 127, 128, 129, 130, 137, 138). Petitioners
22 have complied with the Local Rules of Civil Practice for the District of Nevada, and the Court
23 grants their Verified Petitions.

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